

## Federal Acquisition Regulation

36.609-1

board to recommend additional firms in accordance with 36.602.

[48 FR 42356, Sept. 19, 1983, as amended at 60 FR 37777, July 21, 1995]

### **36.607 Release of information on firm selection.**

(a) After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any release only in general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the contracting officer may release award information, (see 5.401).

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.1004 (b) through (g). Note that 15.1004 (d)(2) through (d)(5) does not apply to architect-engineer contracts.

[48 FR 42356, Sept. 19, 1983, as amended at 60 FR 42657, Aug. 16, 1995]

### **36.608 Liability for Government costs resulting from design errors or deficiencies.**

Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is other-

wise in the Government's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

### **36.609 Contract clauses.**

#### **36.609-1 Design within funding limitations.**

(a) The Government may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit (funding limitation). If the price of construction proposed in response to a Government solicitation exceeds the construction funding limitation in the architect-engineer contract, the firm shall be solely responsible for redesigning the project within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, if the cost of proposed construction is affected by events beyond the firm's reasonable control (e.g., if there is an increase in material costs which could not have been anticipated, or an undue delay by the Government in issuing a construction solicitation), the firm shall not be obligated to redesign at no cost to the Government. If a firm's design fails to meet the contractual limitation on construction cost and the Government determines that the firm should not redesign the project, a written statement of the reasons for that determination shall be placed in the contract file.

(b) The amount of the construction funding limitation (to be inserted in paragraph (c) of the clause at 52.236-22) is to be established during negotiations between the contractor and the Government. This estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the amount, the contracting officer should make available to the contractor the information upon which the Government has based its initial construction estimate and any subsequently acquired information that may affect the construction costs.